DOCUMENT RESUME

ED 380 035 HE 028 151

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TITLE The Evolution of the Concept of "Sexual Harassment" in Higher Education.
PUB DATE [94]
NOTE 13p.
PUB TYPE Viewpoints (Opinion/Position Papers, Essays, etc.) (120)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Behavior Standards; Compliance (Legal); *Definitions; Employer Employee Relationship; Higher Education; *Sexual Harassment; Social History; Teacher Student Relationship; *Trend Analysis; Victims of Crime
IDENTIFIERS Crocker (Phyllis L)

ABSTRACT

Courts have tended to find that more and more behavior can be classified as sexual harassment, and many academic feminists have also pressed for a more inclusive conception of sexual harassment. Phyllis Crocker has argued that institutions of higher education should remove distinctions between "more and less" serious forms of sexual harassment and should adopt "victim-based" definitions. Her ideas have been extended with the concept of "contrapower sexual harassment." Educational institutions have addressed the problem by implementing policies expansively proscribing certain conduct procedures. Expansive conceptions make it possible to discuss and problematize a wide variety of issues concerning gender relations and make it easier to argue that existing means of coping with the problem are by themselves inadequate. However, conceiving sexual harassment in increasingly broad terms has potential dangers: (1) broad conceptions may imply that girls and women are so weak and vulnerable that they must be protected from all that might give offence; (2) they reinforce assumptions about women's "natural" modesty and passivity rather than enabling women to claim and enjoy their sexuality; (3) they may make some male professors reluctant to work closely with female junior faculty or students; and (4) placing foul language on par with physical attacks may trivialize the issues. (Contains 17 reference notes.) (JDD)

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ED 380 035

# The Evolution of the Concept of "Sexual Harassment" in Higher Education

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## The Evolution of the Concept of "Sexual Harassment" in Higher Education

*Introduction*

There is considerable evidence that women had been subjected to treatment now generally conceived to be sexual harassment long before anyone saw such treatment as specifically harassing, let alone as discriminatory in the legal sense.[1] Yet a decade passed between the passage of the Civil Rights Act of 1964 and a Federal Court's recognition of sexual harassment as a potential violation of this statute, and still another beyond that before the Supreme Court heard its first sexual harassment case concerning employment; it was not until 1992 that the Supreme Court ruled on its first case of sexual harassment in education. Since the time sexual harassment was first recognized legally, however, it has been invoked to describe the experiences of remarkably large numbers, with some arguing that as many as seventy percent of all college women have been sexually harassed,[2] that boys as young as five can be sexual harassers,[3] and that, conversely, these boys, as well as their adult counterparts, may also be victims of sexual harassment.[4]

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[1]See, for example, Mary Bularzik, "Sexual Harassment in the Workplace: Historical Notes," in *Workers' Struggles, Past and Present: A "Radical America" Reader*, ed. James Green (Philadelphia: Temple University Press, 1983), 117-135.

[2]See, for example, Michele A. Paludi et al., "Myths and Realities: Sexual Harassment on Campus," in *Ivory Power: Sexual Harassment on Campus*, ed. Michele A. Paludi (Albany: State University of New York Press, 1987), 1-13.

[3]Recent cases of sexual harassment in public schools, including one involving second graders, have been discussed widely in the popular media. See, for example, Jerry Adler and Diane Rosenberg, "Must Boys Always be Boys?" *Newsweek*, 19 October 1992, 77.

[4]American Association of University Women, *How Schools Shortchange Girls*, 73-74; Dolores A. Grayson, "Emerging Issues Related to Homosexuality in Education," *Peabody Journal of Education* 64 (Fall 1987): 132-145.

There is a tendency to think of the concept of sexual harassment in purely contemporary terms, without regard to where it originated or how it has evolved over time. Actually, however, as suggested above, the term now has a nearly twenty year history, and in earlier times meant something other than what it does today. Because "sexual harassment" became a concept of law shortly after it was first articulated, legal scholarship and actual court decisions provide many of the clearest and most concrete examples of its evolution. Although from the time it was first articulated as a problem feminists conceived sexual harassment as a potential violation of antidiscrimination statutes, initially the courts did not share this view. Instead, the courts typically conceived sexual harassment as a "personal problem" that fell outside the purview of the law. But after the courts finally recognized sexual harassment as a violation of federal statutes, they have tended to find that more and more behavior can be classified as sexual harassment. Very early in the concept's history, for instance, one could claim intelligibly that sexual harassment named specific situations in which women were fired for refusing their bosses' sexual advances, but not those in which women were humiliated by sexist comments or jokes; now both kinds of situations, as well as many others, are recognized legally as instances of sexual harassment.

Yet efforts to name as sexual harassment a wider range of conduct and circumstances are not limited to the legal sphere. Many academic feminists have also pressed for a more inclusive conception of sexual harassment, generally by adding to existing legal definitions, or to those contained in institutional policies, more and more possible manifestations of the abuse. Such efforts have had the effect of making the concept of sexual harassment more inclusive mainly by expanding the range of behavior identified as

sexual harassment and making the term applicable to larger numbers of potential victims and harassers.

*The Tendency Toward a More Inclusive Conception of Sexual Harassment in Scholarly Writing*

This tendency is illustrated in a series of articles responding to an essay published by Phyllis Crocker, herself one of the first to call on colleges and universities to adopt a more comprehensive conception of sexual harassment.[5] Crocker's central argument is that institutions of higher education should remove distinctions between "more and less" serious forms of sexual harassment and between conduct that is "deliberate," "intentional," and "repeated" and that which occurs rarely or unintentionally. On Crocker's view, all definitions including these kinds of qualifiers "potentially allow for extreme laxity in preventing, correcting, or punishing sexual harassment."[6] Crocker's proposed alternative to existing definitions of sexual harassment is to adopt "victim-based" definitions. What is allowed to count as "sexual harassment" is defined from the victim's perspective, rather than from the perspective of others who may never have experienced the problem first-hand. In proposing an open-ended approach to conceiving sexual harassment, Crocker sought to emphasize that, for some students, the request for sexual involvement itself or the single sexist joke can, conceivably, have detrimental consequences; much depends on the sensitivities and needs of the individual woman involved in the incident.

While applauding her general approach to conceiving sexual harassment, Katharine A. Benson argued that Crocker had omitted an important manifestation of the problem:

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[5]Phyllis L. Crocker, "An Analysis of University Definitions of Sexual Harassment," *Signs: Journal of Women in Culture and Society* 8 (Summer 1983): 696-707.
[6]Ibid., 703.

> [Crocker] makes no mention of sexual harassment of women professors by their men students. There is a general lack of awareness of this type of harassment not only in Crocker's work and the official definitions [of sexual harassment] but also in other research on sexual harassment within educational institutions....My intention is not to criticize Crocker's original analysis but to extend it."[7]

Thus Benson added to existing conceptions the idea of "contrapower sexual harassment." Whereas "peer harassment" refers to situations in which the victim and the harasser are equals in certain regards, "contrapower harassment" is conceptualized as a form of abuse in which the victim has more formal power than does the abuser. Examples of this form of sexual harassment include "drawings and comments in teaching evaluations, hostile messages, or obscene phone calls that request sex or mention the professor's sexual attractiveness."[8]

While retaining Benson's basic idea that sexual harassment can be inflicted by persons with less formal authority and status than their victims, subsequent analyses conceive "contrapower harassment" more broadly than did Benson. Contrapower harassment, as conceptualized by Benson, must always be anonymous; she reasoned that if student harassers were to reveal their identity, then they could be reprimanded. The professor who knows the identity of the student who is threatening her can insist that he stop the threats, and if he fails to do so, impose a punishment. Although this kind of abuse may be anonymous in most cases, Kathleen McKinney, for one, argues that the concept of sexual harassment, in its contrapower form, should also

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[7]Katharine A. Benson, "Comments on Crocker's 'An Analysis of University Definitions of Sexual Harassment,'" *Signs: Journal of Women in Culture and Society* 9 (Spring 1984): 516-517.
[8]Ibid., 517.

include behavior that, in nature, cannot be anonymous.[9] Specifically, on McKinney's view, the concept should also cover "sexist comments, undue attention, verbal sexual advances, body language, invitations, physical advances, sexual propositions, and sexual bribery." In the enactment of much of such behavior, a male student would make his identity known.[10]

As the series of responses to Crocker's initial essay suggest, there has been a tendency for sexual harassment to become a more inclusive concept. What once named situations in which an individual with more formal power sexually abused a subordinate has expanded to also name situations in which equals and formally less powerful individuals harass their peers and superiors. Most writers arguing that sexual harassment ought to be defined more broadly seem committed mainly to protecting women students and faculty; however conceptually, according to these broad definitions practically no one would be excluded from the class of persons who may be considered potential victims and perpetrators of sexual harassment. The definition developed by Louise Fitzgerald is typical in this regard:

> Sexual harassment consists of the sexualization of an instrumental relationship through the introduction or imposition of sexist or sexual remarks, requests, or requirements, in the context of a formal power differential. Harassment can also occur where no such formal power differential exists, if the behavior is unwanted by, or offensive to, the woman....When a formal power differential exists, all sexist

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[9]Kathleen McKinney, "Sexual Harassment of University Faculty by Colleagues and Students," *Sex Roles* 23 (1990): 421-438; a similar conceptualization of "contrapower harassment" is found in Elizabeth Grauerholz, "Sexual Harassment of Women Professors by Students: Exploring the Dynamics of Power, Authority, and Gender in a University Setting," *Sex Roles* 21 (1989): 789-801.

[10]McKinney, "Sexual Harassment of University Faculty," 429.

> or sexual behavior is seen as sexual harassment, since the woman is not...in a position to object, resist, or give fully free consent; when no such differential exists, it is the recipient's experience and perception of the behavior as offensive that constitutes the defining factor.[11]

Currently, many colleges and universities are questioning whether they ought to forbid all "amorous relations" between students and faculty. A ban on such relations would be consistent with conceptions of sexual harassment that are similar to Fitzgerald's, according to which no student is ever in a position to freely consent to or decline a professor's advances.

### *Educational Implications of Expansive Conceptions of Sexual Harassment*

Thus far colleges and universities, and increasingly elementary and secondary schools, have tried to address the problem of sexual harassment by implementing policies proscribing certain conduct and grievance procedures through which students can report policy violations. To the extent that these policies are informed by highly inclusive definitions of "sexual harassment," we can anticipate that they will begin to proscribe an increasingly broad scope of conduct. In fact, as the number of sexual harassment lawsuits against schools increases, it is likely that schools will be prompted to adopt quite expansive proscriptions. This is the case because such policies offer considerable protection against potentially costly lawsuits[12] Thus I would like

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[11]Louise F. Fitzgerald, "Sexual Harassment: The Definition and Measurement of a Construct," in *Ivory Power*, ed. Michele A. Paludi, cited by Michele A. Paludi (Albany: Statue University of New Tork Press, 1990), 24 quoted in Michele A. Paludi and Richard B. Barickman, *Academic and Workplace Sexual Harassment*: A Resource Manual (Albany: State University of New York Press, 1991), 7.

[12]Walter B. Connolly and Alison B. Marshall, "Sexual Harassment of University or College Students by Faculty Members," *Journal of College and University Law* 15 (1988): 403.

to suggest some of the potential benefits and dangers of expansive conceptions of sexual harassment.

The main educational advantage of expansive conceptions of sexual harassment is that they enable us to discuss and problematize a wide variety of issues concerning gender relations. We are beginning to understand that many kinds of everyday interaction across genders that were once taken-for-granted can have terrible consequences for girls and women; a large number of these, as suggested above, have now been named "sexual harassment." Even unremarkable instances of sexual harassment, those that will appear to many as "mere" sexism, can be debilitating. Taken singly, many such incidents will appear insignificant; but taken together, over time, they can be psychologically powerful, and tend generally to diminish girls' and young women's sense of self-worth, regardless of whether they are conscious that this is occurring.[13] It is not uncommon for adolescent females, for example, to view their own value as persons in terms defined by boys and men, internalizing subtle and not so subtle sexist messages. It seems reasonable to conclude that some forms of "mild" sexual harassment are implicated in this outcome, when, for example, boys comment on, or "rate," young women on the basis of physical attributes. Perhaps the process through which some women internalize the messages implicit in this kind of conduct is fraught with tensions and various forms of resistance, but these conflicts are nevertheless often "resolved" on the side of sexist values.[14] In addition to its

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[13]See, for example, Karen Bogart and Nan Stein, "Breaking the Silence: Sexual Harassment in Education," *Peabody Journal of Education* 64 (Summer 1987): 157; Sandra Lee Bartky, "On Psychological Oppression," in *Philosophy and Women*, eds. Sharon Bishop and Marjorie Weinzweig (Belmont, CA: Wadsworth, 1979), 33-41; and Rosemarie Tong, "Sexual Harassment," in *Women and Values: Readings in Recent Feminist Philosophy*, ed. Marilyn Pearsall (Belmont, CA: Wadsworth, 1986), 149.

[14]See, for example, Madeline Arnot, "Male Hegemony, Social Class and Women's Education," *Journal of Education* 164 (Winter 1982): 64-89.

implication in girls' and women's conformity to dominant, sexist, values, sexual harassment has been implicated in various physical and emotional problems, including panic reactions, drug and alcohol abuse, feelings of worthlessness, guilt, and shame.[15] When "sexual harassment" is defined broadly, this emphasizes the significance of the fact that sexism is pervasive in our schools, and that its routine manifestations should be viewed as a serious educational issue.

There is also a political advantage to conceiving sexual harassment broadly within school contexts. The more broadly this problem is defined, the easier it becomes to argue that existing means of coping with the problem--prosciptive policies and grievance procedures--are by themselves inadequate. As sexual harassment has been defined more and more inclusively, one finds, not surprisingly, that surveys report higher and higher incidents of the problem. When upwards of 80 percent of all students are found to have experienced sexual harassment, this adds considerable legitimacy to claims that merely banning certain behavior is inadequate to this problem.[16] One may argue that when sexual harassment is thought to affect such a large percentage of students, and in light of the toll this form of abuse can take, the

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[15]See, for example, Paludi and Barickman, *Academic and Workplace Sexual Harassment*, 27-39; and Mary P. Koss, "Changed Lives: The Psychological Impact of Sexual Harassment," in *Ivory Power: Sexual Harassment on Campus*, ed. Michele A. Paludi (Albany: State University of New York Press, 1987), 73-92.

[16]In 1986, a Cornell University survey found, for example, that 78 percent of those responding had experienced sexual harassment inflicted by a peer; at the University of Rhode Island, 70 percent of the women surveyed reported that they were victims of this particular kind of sexual harassment; and at the Massachusetts Institute of Technology, an appalling 92 percent of the respondents indicated that they had experienced some form of sexual harassment by male students: reported in Paludi and Barickman, *Academic and Workplace Sexual Harassment*, 12. The national study of sexual harassment in the high school, conducted in 1992 by the NOW Legal Defence and Education Fund in conjunction with Wellesley College Center for Research on Women, indicates that the problem in middle and secondary schools is as extensive as it is on college campuses, with 92 percent of all respondents affirming that they had been sexually harassed at school; reported in LeBlanc, "Sexual Harassment at School: The Truth is Out," 134-135.



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burden of responsibility is misplaced in recommendations that depend largely on students' willingness and ability to initiate and follow through on grievance procedures. After all, if such a high percentage of students were suffering from any number of other problems thought to seriously compromise their education, poor math or reading skills, for example, it is likely that whole curricula would be revised.

Granting the potential benefits of conceiving sexual harassment in increasingly broad terms, this tendency is not without potential dangers as well. First, highly inclusive conceptions of sexual harassment may imply to some that girls and women are so weak and vulnerable that they must be protected from all that might give offence; the more broadly "sexual harassment" is conceived, the more conduct and speech that can be proscribed in schools' policies. But efforts to protect students, no matter how well intended, can have miseducational consequences. This will be the case if inclusive conceptions and the school policies they spur are taken to imply that girls and young women are incapable of coping successfully with situations they find objectionable by, say, asserting their objections, needs, and preferences.

Second, and closely related, in a sense such conceptions create new offenses and a "new" sensibility regarding sexual relations that is remarkably similar to the old sensibility--the one feminists in the 1960s and 1970s struggled *against*. According to this sensibility, "good" girls and women ought to be deeply offended by sexually-oriented verbal and symbolic expression.[17] There is a sort of prudishness running throughout much of the literature on sexual harassment that seems to run counter to earlier efforts

[17]For an analysis of how the language of "date rape" often reflects a sensibility that earlier feminists challenged see Katie Roiphe, "Date Rape's Other Victim," *New York Times Magazine*, 13 June 1993, 26-30, 40-41.

aimed at enabling women to claim and to enjoy their sexuality. At very least, highly inclusive conceptions may reinforce long-standing assumptions about women's "natural" modesty, weakness, and passivity, and as a corollary, men's "natural" lasciviousness, strength, and aggressiveness.

Third, expansive conceptions of sexual harassment may make some male professors reluctant to work closely with female junior faculty or students. Some may genuinely fear the possibility of accusations of sexual harassment. Others may view expansive conceptions of the problem as a way to avoid responsibilities for female colleagues' and students' development. Even when relations between male and female academics are established, excessive attention to the possibility of giving offense may thwart the process of scholarly collaboration.

Fourth, conceptions of sexual harassment in which, for example, foul language is placed on par with physical attacks may trivialize some of the issues at stake. When nearly every conceivable aspect of male-female interaction is sure to be "unwelcome" by some observer, and hence "sexual harassment," it becomes unclear what the concept could exclude. The danger is that when any sort of conduct can be called sexually harassing, in the minds of some, "sexual harassment" will be equated with "natural" male-female interaction.

*Concluding comments*

This essay has tried to illustrate how the concept of sexual harassment has evolved over time and to suggest some of the implications of this evolution for educational proactive. Clearly, there is much room for further discussion about how sexual harassment ought to be conceived. Such discussion is important because it will help to shape how colleges and universities, as well as other educational institutions, address sexual

harassment. How sexual harassment is ultimately conceived will bear, for example, on whether educational institutions choose to merely forbid certain behavior in their written policies, or whether they deem it necessary to implement more clearly proactive alternatives, such as special classes, workshops, or curricular reforms.